IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.1462 of 1992
Date of Decision : 19.09.2007

Darshan Singh and otheres .....Petitioners

versus

Ram Chand .....Respondent

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Ashish Gupta, Advocate for the petitioners.
Mr.P.C.Chaudhary, Advocate for the respondent.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order passed by the learned Appellate Authority dated 6.1.1992 whereby the appeal against the order of eviction passed by the learned Rent Controller dated 4.11.1988, was accepted and the eviction petition filed by the petitioner on the ground that the premises in dispute has become unsafe and unfit for human habitation was dismissed.

The respondent is tenant of an Ahata measuring about 20' x 20' in the north western portion of the building. The tenanted premises comprises of a room, kitchen and stair case. The remaining portion is being used as Courtyard.

The respondent was inducted as tenant in the premises in dispute at a monthly rent of Rs.5/- in the year 1964. The petitioner sought ejectment of the respondent on the ground of non payment of arrears of rent and for the reason that the premises has become unfit and unsafe for human habitation. It was pointed out that the demised premises was constructed

with inferior quality material when the Mandi of Barnala was constructed and whole of this property has become deteriorated. The woodwork in the roof is affected by white ants. The walls have developed many through and through cracks. Portion of one of the walls to the extent of one half has fallen and loose bricks are only standing on that portion; walls are affected by Rehi; walls are out of plumb and there is apprehension of the walls falling down any moment. The tenant-respondent denied all the assertions made by the petitioner and asserted that there is no defect in the wood used in the roof or in the walls and there is no Rehi and crack in the walls nor they are out of plumb, nor there is any danger of the walls falling down. According to the tenant, the whole building is of pacca bricks and is in good condition and is perfectly fit for human habitation.

Though parties have examined a number of witnesses, but the relevant witness is AW-5 Shamsher Singh, retired Overseer, an expert produced by the landlord, who has given his report Exhibit AW-5/16. Whereas, on behalf of the tenant, Narinder Singh, Engineer has been examined as RW-3 who has given his report Exhibit RW-3/A.

The learned Rent Controller has relied upon the report of the Expert produced by the Landlord, AW-5 Shamsher Singh and after relying on such report, passed an order of eviction of the tenant. Whereas, the learned Appellate Authority found that replacement of the roof is prior to purchase of the building by the present landlord and, therefore, if the landlord has replaced the roof, it cannot be said that the tenant is liable for ejectment. In respect of condition of the building, it was found that the Expert produced by the petitioner has admitted in his cross-examination that there are no cracks in the walls in the demised premises and the walls are

made of pacca bricks. It was also admitted by him that the wall B-K is newly cement plastered from both sides near the window. The allegation that some portion of the walls is Rehi affected has been controverted by the opinion of the Expert Narinder Singh that there are no evidence of any bulging out of the walls and that a multi storied building rests on one of the walls of the demised premises and, therefore, the building cannot be said to be unfit and unsafe for human habitation.

The tenanted premises of 20'x20' consists of a room measuring 12`x15`, Kitchen 5`x8` and the remaining area is court yard. In the court yard, there is stair case as well, as per the site plan Exhibit AW-7. In the report Exhibit AW-5/16, the walls of the room ABKH have been found to be built in mud mortar with pacca bricks without pointing and plaster except wall HK and BK which have been mud plastered. The mud plaster of these walls sounded hallow during checking with light strokes of small hammer, which suggests that there is no bond of mud plaster with the walls caused due to Rehi. The wall HK from outside was found to have no pointing or plaster. The wall is under presence of heavy Rehi in 3`x6" base height. Due to Rehi, the mud mortar has been reduced to non-cohesive, lifeless powder and the joints have become partly hollow due to its crumbling out. The bricks have also crumbed at some points. The compactness of the wall was checked by sounding with small hammer, which reacted in dull and hallow sound alongwith simultaneous depressing impacts on bricks, which shows that Rehi has fully exhausted the compactness and strength of wall. In respect of wall BK, it was reported that brig bricks have been used in base 3`x1" height and small bricks have been used in remaining height of the wall. The part of the wall covering window having newly cement plastered

from both sides and after the window it has been rendered roughly with mud mortar for full height. The outer part of wooden lintel of door has been totally worn out and consumed. The inner part of said lintel has been replaced lateron alongwith the brick work above it. It was reported that three brick pillars at points L, N and M constructed in mud mortar lateron as additional supports to roof beams during relay of roof.

In respect of roof, it is reported that the roof is not original as it appears to have been relaid 12" lower than that of the old roof thereby reducing the height of room. This roof renovation is about 5 to 10 years as the original roof must have become unsafe or have collapsed. A new iron girder has been fixed as additional support under the bridging beam 12"x12". The iron girder has been fixed on two new brick pillars at point L and M. The beam B1 was found to be old and partly eaten by white ant as is evident from the presence of a few holes of 1/4" dia on beam surface. Beam B-4 was found to be totally worn out and badly rotten at ends. Beam B-3 was found to be old beam laid across at 2' from corner A and 3' from corner B supporting additionally beam B4. It was found that such beam is not required for 8' x 10" span. It is an afterward fixation. It was reported that inspite of renovation of the roof, it is still unsafe due to unsafe beams. The Expert has referred to the photographs in support of each of the observations. The walls of the Courtyard HG and GF have been found under heavy Rehi at base as the bricks are crumbling. The iron bars of stair case have been found badly rusted with developments of a long cracks. It was found that the side parda of stair case and adjoining part of wall appears to have collapsed which was afterward laid unskillfully about 1 or 2 years back with dry bricks and bats. The Expert has concluded to the following

effect:-

"xx xx xx

1. The wall HK has been built with small bricks and BK with big bricks in 3'-1" height and with small bricks for remaining part. They are unsafe.

2. The room is unsafe due to unsafe wall HK and BK.

3. Stair case is unsafe and its side parda and adjoining part of wall 4' x 2" long has collapsed due to being unsafe, which was afterward renovated unskillfully.

4. The life of building is about 60 years with afterwards renovation.

5. (a) The roof room has been entirely renovated and laid at 12" lower than the level of old roof, which either collapsed or became unsafe. This has decreased the original height of room.

(b) Three new brick pillars at mark MLN have been built in mud mortar as additional support to the roof due to unsafety of walls BK and HK and beam-B. This is material alteration to the disputed house with a life of about 5 to 10 years. It has materially impaired the value and utility of the disputed house.

Under the circumstances stated above, I am of this opinion that the disputed house is quite unsafe and unfit for human habitation. It is a second class type of building. Its life is about 60 years vide page 34 of Manual of Earth work and estimating by Prof. S.C.Goel and O.P. Jain. Its internal walls have outlived their life. Its requires

> reconstruction. Moreover, the alterations made in the disputed house has materially impaired the value and utility."

On the other hand, Exhibit RW-3/A is the report produced by Narinder Singh RW-3, wherein it has been reported that the walls are made out of bricks laid in mud mortar. He has described the western wall (front wall) made out by big pacca bricks laid in mud mortar 19" wide. This wall is made with an objective of constructing a multi storey building with high class specifications. On the outer side, the entire wall has been cement pointed. The northern wall of the building was made by big pacca bricks. It is very strong and has a multi storey building supported by it on the northern side. The Southern wall is also made of big pacca bricks laid in mud mortar. It is supporting a single storey building on the southern side. On the eastern side, there is courtyard and temporary partition wall without any mortar just to divide the two court yards. No construction is supported by this wall. The said Expert has concluded to the following effect:-

> "xx xx xx
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> 7. The outer walls as described above clearly indicate that it was planned to construct a big budget building with high class specifications. However, the plan was shelved may be due to financial constraints and the building and the building was made as a low budget small dwelling unit with a room, a kitchen, court yard and stairs. Accordingly, wall FG of the room partly blocks the windows W-2 of the front wall. The walls EF and FG of the room had been constructed with mixed bricks, big as well as small. In both these walls upto a height of 3' , big bricks have been

used and there after small bricks with layers of big bricks have been used. All walls are strong and safe. No wall or its portion is affected by Rehi. They are in plumb and no portion has depressed. The roof of the room No.1 has been reconstructed entirely about 15 to 18 years ago. The economize on the cost, beams of different sizes and shapes have been used over which wooden planks have been laid. The room has been checked thoroughly and found quite strong and safe. There are no signs of any failure. All the wooden parts are free from insets. The doors and windows are in good working conditions and free from decay and insets. The floors are made of Pacca bricks laid flat. They are also in good working conditions. The Kitchen (2) has three walls with Northern side open. Its roof consisted of ACC sheets supported on walls G.I. Pipe and wooden scantlings. The stairs are made of burnt bricks laid in cement mortar supported over RBC lintel which is independently supported on its own foundation and the Southern wall as shown in site plan. The stairs are very strong and safe. No portion has cracked or depressed. No iron bars (reinforcement) is exposited.

From the details given above, I am of the opinion that the building under dispute is quite strong and is fit and safe for human habitation."

Though the learned Rent Controller has given a detailed reasoning in accepting the report of the Expert examined by the landlord, but the learned Appellate Authority has discarded the said report for the reason that the Expert has admitted that the walls are made out of pacca

bricks and that there is no cracks. Even if the walls are made out of pacca bricks and there are no cracks, but still the walls are in dilapidated condition. As per the report of the Expert produced by the tenant himself, the walls have been raised with mud mortar. The walls have been constructed by using bricks, big as well as small. The Export has concluded that to economize on the cost, beams of different sizes and shapes have been used over which wooden planks have been laid. Use of the beams of different sizes and shapes, in fact, suggests that the beams have been put at a later stage to support the roof. If the construction has been raised at one time, the beams are expected to be of the same size and shape.

It is not the stand of the tenant in his written statement that the roof was replaced by the landlord prior to purchase of the building by the present petitioner in the year 1995. The learned Appellate Authority has made up a new case which has not been set up by any of the parties. There is dispute regarding the time of replacement of the roof. As per the landlord, it is 5-10 years old, whereas, as per the tenant, it is 15-18 years old. The fact remains that the roof has been replaced which is lower in height than the roof replaced. Such roof is supported by additional pillars. Even the pillars have been found to be in bad condition by the Expert produced by the landlord. The Expert produced by the tenant is silent regarding the condition of the pillars. He has confined himself in respect of condition of the walls.

The walls raised with mud mortar has a limited life. The photographs produced by the Expert examined by the petitioner, show the building in totally dilapidated condition. The reasoning given by the learned Appellate Authority rejecting the evidence of the Expert produced by the petitioner is wholly unjustified and based on surmises and

conjectures. Therefore, the findings recorded by the learned Appellate Authority are not sustainable. Consequently, the findings recorded by the learned First Appellate Court are set-aside and that of the learned Rent Controller are restored.

The present revision petition stands allowed. The respondent is directed to vacate the premises in dispute within 3 months from today.

19-09-2007 (HEMANT GUPTA)
*mohinder JUDGE